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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/801,950	03/08/2001	Philip G. Durr	206580	1451

23460 7590 02/27/2004

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EXAMINER

KENDALL, CHUCK O

ART UNIT	PAPER NUMBER
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2122

DATE MAILED: 02/27/2004

4

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/801,950

Applicant(s)

DURR ET AL

Examiner

Chuck O Kendall

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03/08/2001 & 07/28/2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response to the application filed 03/08/01.
2. Claims 1 - 37 have been examined.

Specification Objection

3. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 1 – 19 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 1 – 19 are neither an apparatus nor process and don't fall under any known category of statutory matter. As disclosed claim

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cites " a program modification database ...". No inter-relationships between steps or no " acts", are being performed so that its functionality can be realized. Claims have to meet certain guidelines to be considered statutory,

- (1) "Tangible" - Applying *In re Warmerdam*, 33 F.3d 1354, 31 USPQ2d 1754 (Fed. Cir. 1994), the examiner will determine whether there is simply a mathematical construct claimed, such as a disembodied data structure and method of making it. If so, the claim involves no more than a manipulation of an abstract idea and therefore, is nonstatutory under 35 U.S.C. § 101. In *Warmerdam* the abstract idea of a data structure became capable of producing a useful result when it was fixed in a tangible medium which enabled its functionality to be realized.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

- (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

7. Claims 1 - 37 are rejected under 35 U.S.C. 102(e) as being anticipated by Baisley et al. USPN 6,330,569 B1(hereinafter "Baisley").

Regarding claim 1, Baisley anticipates a program modification database for providing substitute program segments for particular identified programs, the database comprising:

- a set of substitute program segments (Col.3:10 – 15, see Xml and Uml objects);
- a set of program entries specifying correction information for such particular identification programs, wherein individual ones of the set of program entries comprise:
 - a program matching criteria, and a reference to at least one substitute program segment in the set of Substitute program segments (Col.3:10 – 15, for matching criteria see difference and target reference); and

an index including a set of identifiers, wherein each identifier corresponds to one of the set of program entries (FIG.4, see 38, GHOST OBJECT ID).

Regarding claim 2, the program modification database of claim 1, wherein ones of the set of identifiers comprise text strings corresponding, to at least a portion of a program name (FIG. 5A, step 55, see attributes).

Regarding claim 3, the program modification database of claim 1, further comprising a preliminary search function for comparing ones of the set of identifiers to corresponding information for a program to identify potential matching, entries in the set of program entries (FIG. 5A, for search see step 53, traversal and step 55 for match (comparing)).

Regarding claim 4, the program modification database of claim 3, wherein the corresponding information comprises at least a portion of a program name (FIG.4, see 38, GHOST OBJECT ID, also see Col. 4:20 – 25).

Regarding claim 5, the program modification database of claim 1, wherein the set of substitute program segments includes a program Interface (Col.5: 32 – 34).

Regarding claim 6, the program modification database of claim 1, wherein individual ones of the set of program criteria include a program name (FIG.4, see 38, GHOST OBJECT ID, also see Col. 4:20 – 25 for object name).

Regarding claim 7, the program modification database of claim 6, wherein the programming matching criteria includes at least one File metadata-based criterion (Col.2: 45).

Regarding claim 8, the program modification database of claim 1, wherein the set of potential set of criterion types for specifying a particular program matching criteria is extensible (Col. 1: 57 – 60, see Extensible Markup Language, XML).

Regarding claim 9, the program modification database of claim 8 wherein programming matching criterion types are specified by XML tags (Col. 1: 57 – 60, XML).

Regarding claim 10, the program modification database of claim 1, further comprising a library section one or more program files, including one or more substitute program segments, to be loaded into a process space by a program loader when the

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operating system loads the computer program (FIG. 2, for Library section, see 21, for REPOSITORY).

Regarding claim 11, the program modification database of claim 1, further comprising one or more explicit exclude instructions having a reference to a calling module for which program Substitution is not implemented (Col. 7: 15 – 20, for exclude see “reserved”).

Regarding claim 12, the program modification database of claim 1, further comprising one or more explicit include instructions having a reference to a calling module for which a more general explicit exclude instruction is overridden thereby enabling program segment Substitution for the particular calling module (Col. 7: 23 – 26, for explicit include, see “if not already reserved”).

Regarding claim 13, the program modification on database of claim 1, further comprising a search function for matching criteria of the individual ones of the set of program entries to a program to identify a match (FIG. 5A, steps 52 – 55, see match).

Regarding claim 14, the program modification database of claim 13, wherein the search function comprises procedures for executing a multi-tiered executable program matching scheme to locate a matching entry within the set of program entries for a particular program, the procedures comprising:

a first procedure executing a first search on an index having identifying information for each one of the set of program entries to identify a set of potential matching entries (FIG. 5A, for search see traversal and retrieve and match 51 – 55);
and

a second procedure executing a second search on at least a portion of the set of potential match, entries to identify a program entry matching the particular program based upon the program matching criteria for the program entry (FIG. 5C, step 67, for second search).

Regarding claim 15, the program modification database of claim 1, wherein the set of substitute program segments is stored in a read-only memory (Col. 4: 25 – 35, see computers memory, object and transiently).

Regarding claim 16 the program modification database of claim 1, wherein the set of program entries is stored in a read-only memory (Col. 4: 25 – 35, see computers memory, object and transiently).

Regarding claim 17, the program modification database of claim 1, wherein the set of substitute program segments include substitute executable program interfaces (FIG. 2, see 20).

Regarding claim 18, the program modification database of claim 1, wherein the set of substitute program segments include program patches (Col. 3: 15 – 20, for patch see updated).

Regarding claim 19, the program modification database of claim 1, wherein the set of substitute program segments are stored in a common memory location referenced by differing ones of the set of program entries (FIG. 1, see 13).

Regarding claim 20, Baisley anticipates a method for providing modification segments for a particular program at load time in a computer system including a program modification database having a set of program entries and wherein each program entry includes a program matching criteria and a reference to at least one substitute program segment, the method comprising the steps of;

multi-tiered matching identification information for the particular program to a program matching criteria for an entry within the set of program entries,(FIG. 5A, for matching see 55) the multi-tiered matching step comprising the sub-steps of:

first executing a first search on an index having identifying information for each one of the set of program entries to identify a first set of potential matching entries(FIG. 5A, for search see traversal and retrieve and match 51 – 55); and

second executing, a second search on at least a portion of the first set of potential matching entries to identify a program entry matching the particular program based upon the program matching criteria for the program entry (FIG. 5C, step 67, for second search);

accessing within the entry, in response to the matching step, a sub-field identifying substitute program segments for the particular program (FIG. 5A, see attributes for sub-field); and

memory location references for reading the identified Substitute program segments based upon the accessing step (FIG. 5A, see 59 for references).

Regarding claim 21, the method of claim 20 wherein the identifying information comprises a limited number of characters corresponding to names of programs for which entries are present in the program modification database (Col. 7: 35 – 37, see list).

Regarding claim 22, the method of claim 21, further comprising the step of comparing a full name of the particular program to an executable program name provided for each of the first set of potential matching entries comparison to render a second set of potential matching entries (FIG. 5B).

Regarding claim 23, the method of claim 22, wherein the at least a portion of the first set of potential matching entries corresponds to the second set of potential matching entries (FIG. 5C, step 67, for second search).

Regarding claim 24, the method of claim 20, wherein the index is stored as a packed data structure (Col. 5:65).

Regarding claim 25, the method of claim 20, wherein the program matching criteria includes comparing file rnetadata (Col.2: 45).

Regarding claim 26, the method of claim 20, wherein types of matching information for the program matching criteria are designated by XML tags (Col. 1: 57 – 60, XML).

Regarding claim 27, the method of claim 20, wherein the set of potential types of matching information for the program matching criteria is extensible (Col. 1: 57 – 60, See Extensible Markup Language).

Regarding claim 28, the computer readable medium version of claim 20, see rationale as previously discussed above.

Regarding claim 29, the computer readable medium version of claim 21, see rationale as previously discussed above.

Regarding claim 30, the computer readable medium version of claim 22, see rationale as previously discussed above.

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Regarding claim 31, the computer readable medium version of claim 23, see rationale as previously discussed above.

Regarding claim 32, the computer readable medium version of claim 24, see rationale as previously discussed above.

Regarding claim 33, the computer readable medium version of claim 25, see rationale as previously discussed above.

Regarding claim 34, the computer readable medium version of claim 26, see rationale as previously discussed above.

Regarding claim 35, the computer readable medium version of claim 27, see rationale as previously discussed above.

Regarding claim 36, the apparatus version of claim 1, see rationale as previously discussed above.

Regarding claim 37, the apparatus version of claim 20, see rationale as previously discussed above.

Correspondence Information

8. Any inquires concerning this communication or earlier communications from the examiner should be directed to Chuck O. Kendall who may be reached via telephone at (703) 308-6608. The examiner can normally be reached Monday through Friday between 8:00 A.M. and 5:00 P.M. est.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Dam *can be reached at (703) 305-4552.*

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-3900.

For facsimile (fax) send to central FAX number 703-872-9306 and 703-7467240 draft.

Chuck O. Kendall



TUAN DAM
SUPERVISORY PATENT EXAMINER